

REMARKS

Applicant notes with appreciation the courtesy extended to Applicant's representative, Avery Goldstein, through the in-person interview of May 12, 2010. Applicant also notes with appreciation the potential allowability of the subject matter embodied in claim 14 as detailed in Paper No. 20100320. This amendment is submitted to be fully response to the outstanding Office Action. By way of this amendment, claims 1, 10 and 15 have been amended, while claims 12 and 14 have been canceled. Upon entry of this amendment the claims pending in the application are claims 1, 3-10, 13 and 15 of which only claims 1 and 10 are in independent form. Substantively, independent claim 1 has been amended to recite within the claim preamble and the body thereof the detection of a neurological injury in a subject "prior to transport from a site of the injury". Support for this amendment is found in the specification as filed at paragraphs [0010], [0011], and [0023]. The remaining amendments to claim 1 are submitted to afford better antecedent basis and clarity but otherwise do not change the scope of the claim. Accordingly, these additional amendments to claim 1 find support within the claim as originally filed. Claim 10 has been amended to incorporate the subject matter of objected to claim 14 which also by way of this amendment has been canceled. Claim 10 is further amended consistent with section 3 of Paper No. 20100320 to replace the conjunction "or" with "and". Lastly, claim 15 has been amended to provide an explicit recitation that the physical examination is performed on the subject having suffered a neurological injury. As such, it is submitted that no new matter has been added to the application by way of these amendments. Based on the above amendments to claim 10, the rejection of claim 10 under 35 U.S.C. §112, first paragraph, is submitted to have been overcome.

Currently, claim 1 stands rejected under 35 U.S.C. §112, second paragraph, as failing to recite a structural relationship between the display, the computing device, and the biochemical analyzer. Additionally, claims 1, 3-7, 10, 13 and 15 stand rejected under 35 U.S.C. §102(e) over Sabol et al. (US 2004/0122719 A1) as evidenced by Gozani et al. (US 2002/0183647 A1). Lastly, claims 8 and 9 stand rejected under 35 U.S.C. §103(a) over Sabol et al. as evidenced by Gozani et al. and further in view of Traynelis et al. (US 2004/0138502 A1).

**Remarks Directed to the Rejection of
Claim 1 under 35 U.S.C. §112, Second Paragraph**

The basis of this rejection is the lack of structural cooperative relationship between the display, the computing device, and the biochemical analyzer. (Ibid., section 6, page 3).

Reconsideration of this rejection is requested on the basis that claim 1 even prior to the current amendments recited the biochemical analyzer providing an output signal to the computing device, while the computing device separately generated a detected electrical signal associated with neural conductivity. The display provides indication of the neurological injury and the detected electrical signal. As the detected electrical signal comes from the computing device, it is respectfully submitted that the communication chain from the biochemical analyzer to the computing device to the display was previously decided to a degree needed to satisfy a structural cooperative relationship in compliance with 35 U.S.C. §112, second paragraph. To further clarify the relationship, independent claim 1 has been amended to recite that the display provides indication of the neurological injury “associated with the output signal [from the biochemical analyzer] and the detected electrical signal [from the at least one signal detector of the computing device]”.

Based on the above remarks, reconsideration and withdrawal of the rejection as to claim 1 under 35 U.S.C. § 112, second paragraph, is requested.

**Remarks Directed to Rejection of Claims 1, 3-7, 10, 13 and 15 under
35 U.S.C. §102(e) as Anticipated by Sabol et al. as Evidenced by Gozani et al.**

Anticipation has always been held to require absolute identity between the teachings of a single prior art reference and the claimed subject matter. In *Richardson v. Suzuki Motor Co., Ltd.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989) it was stated, “Every element of the claimed invention must be literally present, arranged as in the claim.”

While Sabol et al. relates to medical data processing, acquisition, and analysis (see [0001]), it is respectfully submitted that the teachings of Sabol et al. are not coterminous in scope with pending independent claim 1 as the teachings of Sabol et al. extend only to an integrated healthcare setting of a hospital or large clinic and are inapplicable to the treatment of a neurologically injured subject prior to transport from the site of injury. Additionally, Sabol et al. lacks guidance as to either “immediate interventive neuroprotective pharmaceutical treatments, or physical transport precautions” that are critical to taking advantage of the “golden hour” subsequent to a neurological injury in which the apoptotic cascade and the resulting secondary neurological injury can be inhibited. As such, it is respectfully submitted that independent claim 1 and those claims that depend therefrom are not anticipated by Sabol et al. as interpreted further with respect to Gozani et al.

Applicant submits that additional bases exist for the allowability of claim 1 as well as dependent claims 3, 5, 7 and independent claim 10 in current form beyond those detailed above. Applicant reserves the right to make such additional remarks of record in due course of prosecution in the event that this rejection is maintained.

In light of the above amendments and remarks, reconsideration and withdrawal of the rejection as to claims 1, 3-7, 10, 13 and 15 over Sabol et al. as evidenced by Gozani et al. are requested.

Remarks Directed to Rejection of Claims 8 and 9 under 35 U.S.C. §103(a) over Sabol et al. in View of Gozani et al. and Further in View of Traynelis et al.

Claims 8 and 9 are believed to be allowable on the basis of dependency from claim 1, now believed to be in allowable form. Additional bases are believed to exist for the allowability of claims 8 and 9 separate from dependency from claim 1. Applicant reserves the right to make such remarks of record in due course of prosecution in the event that this rejection is maintained.

Remarks Directed to Allowable Subject Matter

The objected to subject matter of claim 14 has been incorporated into independent claim 10 by way of this amendment and as such independent claim 10 and those claims that depend therefrom, namely claims 13 and 15, are likewise believed to be in allowable form.

Summary

With entry of this amendment claims 1, 3-10, 13 and 15 are pending in the application. Of these, claims 1, 10 and 15 have been amended while claims 12 and 14 have been canceled. Each of the pending claims is believed to be in allowable form and directed to patentable subject matter. Reconsideration and withdrawal of the outstanding rejections and the passing of this application to allowance are solicited.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 07-1180.

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Respectfully submitted,

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